

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Chula Vista Cable, Ltd.	)	
Operator of Cable Television System	)	File Number: EB-06-SD-190
Community Unit ID: CA1272	)	NAL/Acct. No.: 200732940005
Physical System ID: 012866	)	FRN: 0016106908
Chula Vista, California	)	

**FORFEITURE ORDER**

**Adopted: September 25, 2007**

**Released: September 27, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand, four hundred dollars (\$6,400) to Chula Vista Cable, Ltd. (“CVC”), owner of a cable system serving Chula Vista, California, for repeated violation of Section 11.35 of the Commission’s Rules (“*Rules*”).<sup>1</sup> On March 21, 2007, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$8,000 to CVC for failing to ensure the operational readiness of the Emergency Alert System (“*EAS*”) equipment in its Chula Vista, California cable system.<sup>2</sup> In this *Order* we consider CVC’s request that we reduce the forfeiture amount because of its financial ability to pay the forfeiture, and its history of compliance with the Rules.

**II. BACKGROUND**

2. On August 8, 2006, an agent of the Enforcement Bureau’s San Diego Office attempted to inspect the operational readiness of the EAS equipment installed at CVC’s cable television system serving Chula Vista, California. During this inspection, the San Diego agent found that the system’s EAS equipment, including both the encoder and the decoder, had been purchased and delivered to the cable system’s head-end, but was never installed. Upon returning to the San Diego Office, the agent reviewed the Commission’s records and other public records and determined that CVC had over 3000 subscribers and had not been granted waivers of EAS requirements.<sup>3</sup>

3. On December 8, 2006, a Letter of Inquiry (“*LOI*”) was issued by the San Diego Office to CVC asking questions concerning the cable system’s FCC registration filings and cable leakage program, as well as the status of the EAS equipment at CVC. No response was received to that *LOI*. A second *LOI* was sent February 8, 2007, warning that sanction action against CVC was possible if no reply was received. A

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<sup>1</sup> 47 C.F.R. § 11.35.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732940005 (Enf. Bur., Western Region, San Diego Office, released March 21, 2007).

<sup>3</sup> See *Report and Order, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055, 4083 (2002) (the Commission will continue to grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship); *Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd 20108 (EB 2002) (Several cable systems granted 36 month EAS waivers in Arizona and New Mexico, until October 2005); *Public Notice: EAS Waiver Extensions Granted To Very Small Cable Systems*, 21 FCC Rcd 7129 (EB 2006) (no EAS waivers extensions for any CVC cable systems requested or granted).

timely reply to the second LOI from CVC was received by the San Diego Office on February 20, 2007, indicating that the EAS equipment has been installed, but none had been operational prior to the August 8, 2006, inspection. The reply also indicated that the owner had not installed EAS equipment for at least two years.

4. On March 21, 2007, the Enforcement Bureau's San Diego Office issued the *NAL* in the amount of \$8,000 to CVC for violating Section 11.35 of the Rules. CVC filed a response ("*Response*") to the *NAL* on April 18, 2007. In its *Response*, CVC asks for mitigation of the forfeiture based on its ability to pay, as well as its history of compliance with the Commission's Rules.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>6</sup> In examining CVC's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

6. The Rules provide that every cable television system is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.<sup>8</sup> The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.<sup>9</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>10</sup> Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station.

7. Section 11.35 of the Rules requires all cable television systems to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Cable systems must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received and when defective equipment is removed and restored to service.<sup>11</sup>

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> 47 C.F.R. §§ 11.11 and 11.41.

<sup>9</sup> 47 C.F.R. §§ 11.1 and 11.21.

<sup>10</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

<sup>11</sup> 47 C.F.R. § 11.35(a), (b).

8. Section 11.61(a)(1) and (2) of the Rules requires cable television systems to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>12</sup> The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Appropriate entries must be made in the broadcast station log as specified.

9. The August 8, 2006, inspection by a San Diego agent revealed that the CVC EAS equipment was not operational, however, EAS equipment was present at the system at the time of the inspection. In its response to the second LOI issued by the San Diego Office, CVC acknowledged that it had not installed EAS equipment for over two years, believing no EAS equipment was required for a system of its size. However, no waivers of the EAS requirements have been granted to CVC.

10. CVC does not dispute the EAS violations found by the San Diego agent, however, CVC asks that the forfeiture amount be reduced because the size of the forfeiture “will greatly impact the ability of the company to continue.” To support this claim, CVC supplies its last three years of tax records. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>13</sup> The data produced by CVC, however, does not support cancellation or reduction of the forfeiture, as the forfeiture amount does not exceed two percent of CVC’s average gross revenues for the three years covered by the financial documents. Therefore, we are unable to reduce the forfeiture based on CVC’s inability to pay.

11. CVC appears to ask that the forfeiture amount be reduced based on its overall history of compliance with the Commission’s Rules. We have reviewed our records and we concur. Consequently, we reduce CVC’s forfeiture amount from \$8,000 to \$6,400.

12. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$6,400 is warranted.

#### IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Chula Vista Cable, Ltd., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,400 for repeatedly violating Section 11.35 of the Rules.<sup>14</sup>

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications

<sup>12</sup> The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002).

<sup>13</sup> *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

<sup>14</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35.

<sup>15</sup> 47 U.S.C. § 504(a).

Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Chula Vista Cable, Ltd., at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.